

**VOSH PROGRAM DIRECTIVE: 12-152E**

**ISSUED: 01 December 2016**

**SUBJECT**                      **Occupational Injury and Illness Recording and Reporting Requirements, §§1904.0 through 1904.46; and Amendments**

**Purpose**                        **CHANGE I (2001):** Transmits the revised federal final rule for Occupational Injury and Illness Recording and Reporting Requirements and the repeal of Accident Reports, Occupational Injury and Illness Records and the Annual Survey, 16 VAC 25-60-50 through 16 VAC 25-60-70, respectively, in the VOSH ARM.

**CHANGE II (2003):** Transmits revised hearing loss recording criteria in §1904.10(a) and 1904.10(b)(1)-(7) .

**CHANGE III (2004):** Incorporates the delayed federal implementation of §§1904.10, 1904.12 and the second sentence of §1904.29(b)(7)(vi) until January 1, 2004 due to proposed final rule to resolve the MSD definition.

**CHANGE IV (2004):** Deleted the “musculoskeletal disorder” (MSD) entry on the OSHA 300 Log due to OSHA determination of no justification for a separate MSD column on the 300 Log for a work-related MSD.

**CHANGE V (2015):** Transmits revised workplace injury and illness reporting requirements and introduces a new industry classification system to determine whether employers with 11 or more employees must maintain injury and illness records.

**CHANGE VI (2016):** Transmits revised workplace injury and illness reporting requirements that duplicate the federal 24 hour period for notification to VOSH of an inpatient hospitalization, amputation, or loss of an eye.

**CHANGE VII (2016):** This directive transmits to field personnel improved tracking of workplace injuries and illnesses To assure completeness and accuracy of injury and illness data collected by employers and reported to OSHA, OSHA has issued a final rule to modernize injury and illness data collection to better inform workers, employers, the public, and OSHA about workplace hazards. Analysis of this data will enable OSHA to use its enforcement and compliance assistance resources more efficiently.

*This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.*

**Scope**

This directive applies to all VOSH personnel.

**References**

**CHANGE I:** 66 FR 5915 (Jan. 19, 2001); OSHA Memorandum 01-03, July 9, 2001.  
66 FR 52031 (Oct. 12, 2001); OSHA Memorandum 01-03a, Nov. 13, 2001.

**CHANGE II:** 67 FR 44037 (July 1, 2002); OSHA Memorandum #01-03b, July 8, 2002.

**CHANGE III:** 67 FR 77165 (Dec. 17, 2002); OSHA Memorandum #01-03c, Jan. 23, 2003.

**CHANGE IV:** 68 FR 38601 (June 30, 2003); OSHA Memorandum #01-03d, July 18, 2003.

**CHANGE V:** 79 FR 56129 (Sept. 18, 2014); & Chapter 270, 2015 Virginia Acts of Assembly.

**CHANGE VI:** Chapter 336, 2016 Virginia Acts of Assembly.

**CHANGE VII:** 81 FR 29623 (May 12, 2016); & 81 FR 31854 (*May 20, 2016*)

**Cancellation**

VOSH Program Directive 12-152D (*September 15, 2015*)

**Action**

Directors and Managers shall ensure that field personnel understand and comply with the standard included in this directive.

**Effective Dates****CHANGE I:**

- December 31, 2001: Repeal of 16 VAC 25-60-50 through 16 VAC 25-60-70
- January 1, 2002: §§1904.0 through 1904.9, 1904.11, & 1904.13 through 1904.46
- January 1, 2003: §§1904.10 and 1904.12

**CHANGE II:** March 1, 2003

**CHANGE III:** January 1, 2004

**CHANGE IV:** January 15, 2004

**CHANGE V:** September 15, 2015

**CHANGE VI:** December 1, 2016

**CHANGE VII:** December 1, 2016

**Expiration Date**

Not Applicable

C. Ray Davenport

Commissioner

Distribution: Commissioner of Labor and Industry  
Assistant Commissioner  
VOSH Directors and Managers  
Legal Support and IMIS Support Staffs

Cooperative Programs Director and Manager  
VOSH Compliance and Cooperative  
OSHA Region III and Norfolk Area Offices

## **I. Background and Summary.**

**CHANGE I:** On January 18, 2001, federal OSHA published the final rule on recording and reporting requirements (“recordkeeping”), with an effective date of January 1, 2002 (66 FR 5916). OSHA revised this final rule addressed 30 year old complicated recordkeeping requirements with cumbersome forms and limited technological assistance.

- On January 20, 2001, the new Bush Administration ordered a blanket 60-day freeze on federal regulations, including recordkeeping, that were adopted and published before January 20, 2001 by the prior Clinton Administration, but had not yet taken effect. The purpose was to provide additional time to further review the efficacy and necessity of the regulations involved. Following the review, OSHA determined that all but a few of the provisions of the final recordkeeping rule should take effect as scheduled on January 1, 2002.
- On July 3, 2001, OSHA published a notice explaining that it was reconsidering the requirement in §1904.10 to record all cases involving an occupational hearing loss averaging 10 decibels (dB) or more. OSHA found that there were reasons to question the appropriateness of 10 dB as the recording criterion, and requested public comment on other approaches and criteria. OSHA also stated that it was reconsidering the §1904.12 requirements defining “musculoskeletal disorder” (MSD) and that employers check the MSD column on OSHA logs for cases involving an MSD. OSHA determined that it would be premature to implement a new definition of MSD while it was considering the issue in connection with a comprehensive ergonomics plan.
- On October 12, 2001, after considering the requested public comments, OSHA published a final rule, 66 FR 52031-52034, delaying the effective date of §§1904.10(a), 1904.12(a), and 1904.12(b) until January 1, 2003. Federal OSHA added a new paragraph (c) to §1904.10, which established a 25-dB recording criterion for hearing loss cases for calendar year 2002. Additionally, OSHA modified the regulatory note to paragraph (b)(7)(vi) of §1904.29 to delay the language referring to privacy case consideration for MSD cases.

At its meeting on October 18, 2001, the Safety and Health Codes Board adopted federal OSHA’s revised rule on recording and reporting occupational injuries and illnesses, §§1904.0 through 1904.9, 1904.11, and 1904.13 through 1904.46, with an effective date of January 1, 2002. The Board also delayed the effective dates, until January 1, 2003, for the following provisions: §§1904.10 (a) and (b), specifying criteria for cases involving occupational hearing loss; 1904.12, defining “musculoskeletal disorder” (MSD), and requiring employers to check the MSD column on the OSHA Log if an employee experiences a work-related MSD; as well as the second sentence of §1904.29(b)(7)(vi) covering forms, and stating that MSDs are not considered privacy concern cases.

With this revision, federal OSHA updated its recording and reporting rule, including the forms employers use to record the occupational injuries and illnesses. The list of exempted industries was updated. The regulations checklists and flowcharts will be used to provide easier interpretations of recordkeeping requirements.

Additionally, the Board repealed the following: 16VAC25-60-50, Accidents Reports; 16VAC25-60-60, Occupational Injury and Illness Records; and 16VAC25-60-70, Annual Survey. The adoption of federal OSHA’s Recording and Reporting Requirements once again allows these VOSH regulations to be identical to, and “as effective as,” those of federal OSHA.

**CHANGE II:** On July 1, 2002, federal OSHA published in the *Federal Register* two regulatory actions relating to Occupational Injury and Illness Recording and Reporting Requirements. The first notice was a final rule revising the hearing loss recording provisions of the recordkeeping rule in §1904.10. A note was added delaying until further notice the applicability of paragraph (b)(7) which requires employers to check the hearing loss column on the Log for hearing loss cases meeting the revised recording criteria. (67 FR 44037-44048) In a second and separate action published in the same issue of the *Federal Register*, OSHA sought public comments on a proposed one-year delay, from January 1, 2003 until January 1, 2004, of §1904.10(b)(7), establishing new recording criteria for occupational hearing loss that captured Standard Threshold Shifts (STS) cases when the employee's overall hearing level exceeded 25dB from audiometric zero. (67 FR 44037-44048)

At its meeting on December 2, 2002, the Safety and Health Codes Board adopted federal OSHA's revised final rule covering the hearing loss recording provisions of §1904.10(a) and (b)(1)-(7), effective on March 1, 2003, and the delay of the effective date for §1904.10(b)(7) until further notice.

**CHANGE III:** On July 1, 2002, federal OSHA issued a final rule amendment that revised the criteria for recording work-related hearing loss.

- It also sought public comments on a proposed one-year delay, beginning January 1, 2003 of §1904.10(b)(7), regarding the recording of MSDs on OSHA's injury and illness logs. Written comments were required to be submitted by August 30, 2002. After consideration of the views of interested parties, OSHA determined that the effective date of §§1904.12 and 1904.29(b)(7)(vi) should be delayed until January 1, 2004.
- On December 17, 2002 it issued a final rule delaying until January 1, 2004 the effective date of the MSD and hearing loss column requirements in §§1904.12 and 1904.29(b)(7)(vi), respectively, and the statement in §1904.29(b)(7)(vi) that MSDs are not considered privacy concern cases. (67 FR 77165-77170). However, it had not reached a decision on the need for an MSD column and other issues related to §1904.12 on which comments had been requested.

On June 13, 2003, the Safety and Health Codes Board adopted federal OSHA's delayed effective dates with an effective date of January 1, 2004.

**CHANGE IV:** On June 30, 2003, in a continuing effort to address lingering recordkeeping issues, federal OSHA published in the *Federal Register* (66 FR 38601) its decision to delete the MSD requirement in §1904.12, and related provisions as unnecessary. On November 5, 2003, the Safety and Health Codes Board adopted federal OSHA's amendment to the revised recordkeeping final rule in §§1904.12 and 1904.29(b)(7)(vi), with an effective date of January 15, 2004.

**CHANGE V:** On September 18, 2014, in 79 FR 56186 and 79 FR 56187, OSHA again amended the Occupational Injury and Illness Recording and Reporting Requirements to include the following:

- NAICS Update and Reporting Revisions - Non-Mandatory Appendix A to Subpart B of Part 1904 Regarding Partially Exempt Industries. Appendix A contains a list of industries that are partially exempt from requirements to keep records of work-related injuries and illnesses due to relatively low occupational injury and illness rates. The updated appendix is based on more recent injury and illness data and lists industry groups classified by the North American Industry Classification System (NAICS).

Prior to this NAICS update, the appendix listed industries classified by Standard Industrial Classification (SIC). The affected establishments are only partially exempt from keeping these records because, while they are exempt from routine OSHA injury and illness recordkeeping requirements, the Bureau of Labor Statistics (BLS) may require any establishment to respond to its Survey of Occupational Injuries and Illnesses (SOII), and OSHA may require any establishment to respond to its annual injury and illness survey.

- In addition to the previously allowed reporting by telephone or in person to the VOSH Office that is nearest to the site of the incident, or using the central toll-free telephone number of either federal OSHA or the Virginia State Police, employers now have a third way to report such incidents by electronic submission using the fatality/injury/illness reporting application located on OSHA's public Web site at [www.osha.gov](http://www.osha.gov).
- Section 1904.39(a)(2) of the revised federal final rule adds a specific requirement to report any in-patient hospitalization, amputation, or loss of an eye.
- The amended federal regulatory text now provides an explicit definition for "in-patient hospitalization" to be used, specified at §§1904.39(b)(9) and 1904.39(b)(10)). The final rule defines "in-patient hospitalization" as a formal admission to the in-patient service of a hospital or clinic for care or treatment. Employers do not have to report in-patient hospitalizations that involve only observation and/or diagnostic testing. [79 FR 56156];
- Section 1904.39(b)(11) of the revised federal final rule adds a specific definition of "amputation" as the traumatic loss of a limb or other external body part. An amputation includes a part, such as a limb or appendage that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached.
- It also clarified that if the employer does not immediately learn about a reportable event, i.e., fatality, in-patient hospitalization, amputation, or loss of an eye, the employer must make the report within the above stated timeframe starting from when the event is reported to the employer.

The vast majority of adoptions of other identical to federal OSHA standards for use by the VOSH Program allow for the use of Virginia Administrative Process Act (APA) Article 2 exemption which reduces the adoption time from the approximately 18 month duration for the full regulatory adoption process to becoming effective 30 days after publication in the Virginia Register. However, in this particular case, the changes enacted by regulation, i.e., to change injury reporting timeframe requirements, are also statutorily specified in the controlling statute for the regulation, §40.1-51.1 of the Code of Virginia. As a result, an amendment to the Code of Virginia was necessary prior to the adoption by the Board of this part of the regulatory change. The Department sought and achieved such a statutory change in *Chapter 270 of the Laws of 2015*, effective July 1, 2015. However, Chapter 270 contained a bill drafting error that mistakenly required an eight (8) hour reporting period not just for fatalities, but for all other reportable events as well, i.e., in-patient hospitalizations of just one (1) person, amputations, or loss of an eye.

On July 9, 2015, the Safety and Health Codes Board adopted federal OSHA's amendment to the revised recordkeeping final rule in §§1904.2 and 1904.39, with an effective date of September 15, 2015.

**CHANGE VI:** As discussed in Change V above, the Board’s amendment to this regulation in 2015 contained a bill drafting error that mistakenly required an eight (8) hour reporting period not just for fatalities, but for all other events as well, i.e., in-patient hospitalizations of just one (1) person, amputations, or loss of an eye. Again, prior action by the General Assembly was necessary to correct the 2015 error to the statute and allow for subsequent regulatory action by the Board. A second statutory change was successfully sought by the Department and adopted by the 2016 session of the General Assembly as *Chapter 336 of the Laws of 2016*, effective July 1, 2016 in order to allow the Board amend the regulation to comply with federal OSHA’s requirement to report each in-patient hospitalization, amputation, and loss of an eye within 24 hours from the time the event is reported to the employer. Fatalities still must be reported within 8 hours and brings the Board’s Part 1904 requirements into complete conformity with the federal OSHA Part 1904 requirements.

On September 13, 2016, the Safety and Health Codes Board adopted correcting amendments to the Occupational Injury and Illness Recording and Reporting Requirements – Reporting Fatalities, Hospitalizations, Amputations, and Losses of an Eye as a Result of Work-related Incidents to OSHA, 16VAC25-85-1904.39, with an effective date of December 1, 2016.

**CHANGE VII:** OSHA regulations at Part 1904 still require employers with 11 or more employees in most industries to: keep records of work-related injuries and illnesses at their establishments; help these employers and their employees identify hazards; and fix problems and prevent additional injuries and illnesses. Employers covered by these rules must prepare the following forms for each case: OSHA Forms 300 – *Log of Work-Related Injuries and Illnesses*, 300A – *Summary of Work-Related Injuries and Illnesses*, and 301 – *Injury and Illness Incident Report*. The injury and illness data entered on these three recordkeeping forms is obtained only through onsite inspections, which VOSH collects the data from the individual establishments being inspected, or by inclusion of an establishment in a survey pursuant to the previous Part 1904.41, *Annual OSHA Injury and Illness Survey of Ten or More Employers*.

**A. Federal Register May 12, 2016 Change to Existing Recording and Reporting Requirements in Part 1904**

This amendment makes several changes to the existing recording and reporting requirements under Part 1904. It now requires certain employers to electronically submit the injury and illness information they are already required to keep under existing Part 1904 regulations:

1. Establishments with fewer than 20 employees at all times during the year do not have to routinely submit information electronically to OSHA. OSHA requires all employers who receive notification from OSHA to electronically submit the requested information from their injury and illness records to OSHA or OSHA’s designee.
2. Establishments with 20 to 249 employees that are classified in certain industries with historically high rates of occupational injuries and illnesses must electronically submit annually information from OSHA Form 300A only.
3. Establishments with 250 or more employees that are currently required to keep OSHA injury and illness records must electronically submit information from OSHA Forms 300 – *Log of Work-Related Injuries and Illnesses*, 300A – *Summary of Work-Related Injuries and Illnesses*, and 301 – *Injury and Illness Incident Report*.

4. OSHA intends to post the data from these submissions on its secure, publicly accessible website at [www.osha.gov](http://www.osha.gov). Any personally Identifiable Information (PII) will be removed before the data are put on the website and released to the public.
5. Implementation Schedule - VOSH will match federal OSHA's compliance schedule and will comply with OSHA's phase-in of the implementation schedule of the new reporting requirements over two years and would use the same implementation dates. The key implementation dates are:
  - July 1, 2017 – Employers with 20-249 employees in designated, high-risk industries will be responsible for electronically submitting information from their 2016 OSHA 300A Forms. Also, employers with 250 employees or more that are required to routinely submit information under the final rule will be responsible for submitting information from their 2016 OSHA 300A Forms.
  - July 1, 2018 – Employers with 250 employees or more that are required to routinely submit information under the final rule will be responsible for submitting information from their 2017 OSHA 300, 301, and 300A Forms.
  - March 2, 2019 – Employers with 250 employees or more that are required to routinely submit information under the final rule will be responsible for submitting information from OSHA 300, 301, and 300A Forms. Employers with 20-249 employees in designated industries will be responsible for electronically submitting information from their OSHA 300A Forms.
6. Employee Involvement - §1904.35

This action also amends the recordkeeping regulation to update requirements on how employers inform employees to report work-related injuries and illnesses to their employer. Discrimination or retaliation against an employee who reports a fatality, injury, or illness is a violation of §40.1-51.2:1 and §40.1-51.2:2 of the *Code of Virginia* as well as Section 11(c) of the federal OSH Act.

VOSH has had no statutory authorization OSHA to act against an employer unless an employee files a complaint, as is also the case for federal OSHA. However, now under §1904.35 (v)(1)(iv) of the amended regulation, VOSH, like OSHA, will now be able to cite an employer for taking adverse action against an employee for reporting an injury or illness, even if the employee did not file a complaint. Additionally, citations can result in orders requiring employers to abate violations, which may be a more efficient tool to correct employer policies and practices in general thereby affecting multiple workers, rather than action under §40.1-51.2:1 and §40.1-51.2:2 of the *Code of Virginia*, which is often employee-specific.

The amendments to §1904.35 contain three new provisions to promote complete and accurate reporting of work-related injuries and illnesses while also expanding OSHA's anti-retaliation protections:

- a. Paragraphs (a)(2) and (b)(1)(iii) of §1904.35 require employers to inform employees of their right to report work-related injuries and illnesses free from retaliation.

The revised regulation strengthens paragraph (a) of §1904.35 by expanding the previous requirement for employers to inform employees how to report work-related injuries and illnesses so that the rule now includes a mandate to inform employees that they have a right to report work-related injuries and illnesses free from retaliation by their employer. This obligation may be met by posting the VOSH *Job Safety and Health – It’s The Law* worker rights poster from April 2014, or later.

OSHA also made a technical edit to paragraph (a)(3) of §1904.35 to now clarify that the rights of employees and their representatives to access injury and illness records are governed by §1904.35(b)(2).

- b. Paragraph (b)(1)(i) of §1904.35 now clarifies that the existing implicit requirement that an employer’s procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and
- c. Paragraph (b)(1)(iv) of §1904.35 incorporates explicitly into Part 1904 the existing prohibition on retaliation against employees for reporting work-related injuries or illnesses consistent with the existing prohibition contained in section 11(c) of the OSH Act. Three specific types of adverse employer actions that OSHA examined included: disciplinary policies, automatic post-accident drug testing, and employee incentive programs.

#### 7. Other Significant Changes to the Regulation

##### a. Employees’ Rights - §1904.36 – Prohibition Against Discrimination

To ensure that the injury data on OSHA logs are accurate and complete, the amendment also promotes an employee’s right to report injuries and illnesses without fear of retaliation, and clarifies that an employer must have a reasonable procedure for reporting work-related injuries that does not discourage employees from such reporting. This aspect of the regulatory change targets employer programs and policies such as mentioned in Change VII item A.6.c. While nominally promoting safety, these may have the effect of discouraging workers from reporting injuries and, in turn, leading to incomplete or inaccurate records of workplace hazards.

##### b. Addition of Appendix A to Subpart E of Part 1904

OSHA added Appendix A to Subpart E of Part 1904, Designated Industries for §1904.41(a)(2) Annual Electronic Submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by Establishments With 20 or More Employees but Fewer than 250 Employees in Designated Industries.

#### B. **Federal Register May 12, 2016 Correction to the May 12, 2016 Federal Register Amendment**

On May 20, 2016, federal OSHA published in the *Federal Register* a correction to the Final Rule revising its Recording and Reporting Occupational Injuries and Illnesses Regulation. Paragraph (b)(2) of §1904.35, Employee Involvement, was inadvertently designated as “[Reserved]”. The correction



reinserts the paragraph which deals with implementing the basic requirement of an employee and his representatives' involvement in the recordkeeping system.

On September 13, 2016, the Safety and Health Codes Board adopted federal OSHA's Final Rule to Improve Tracking of Workplace Injuries and Illnesses and its Correction, with an effective date of December 1, 2016.

Attachments: **CHANGE I:** NONE. Please refer to 66 FR 5915 (January 19, 2001):  
[http://www.osha.gov/FedReg\\_oshapdf/FED20010119.pdf](http://www.osha.gov/FedReg_oshapdf/FED20010119.pdf)

NONE. Please refer to 66 FR 52031 (October 12, 2001):  
[http://www.osha.gov/FedReg\\_oshapdf/FED20011012.pdf](http://www.osha.gov/FedReg_oshapdf/FED20011012.pdf)

**CHANGE II:** NONE. Please refer to 67 FR 44037 (July 1, 2002):  
[http://www.osha.gov/FedReg\\_oshapdf/FED20020701.pdf](http://www.osha.gov/FedReg_oshapdf/FED20020701.pdf)

**CHANGE III:** NONE. Please refer to 67 FR 77165 (December 17, 2002):  
[http://www.osha.gov/FedReg\\_oshapdf/FED20021217.pdf](http://www.osha.gov/FedReg_oshapdf/FED20021217.pdf)

**CHANGE IV:** NONE. Please refer to 68 FR 38601 (June 30, 2003):  
[http://www.osha.gov/FedReg\\_oshapdf/FED20030630.pdf](http://www.osha.gov/FedReg_oshapdf/FED20030630.pdf)

**CHANGE V:** 79 FR 56129 (September 18, 2014) or refer to:  
[http://www.osha.gov/FedReg\\_oshapdf/FED20140918.pdf](http://www.osha.gov/FedReg_oshapdf/FED20140918.pdf)

**CHANGE VI:** 79 FR 56129 (September 18, 2014) or refer to:  
[https://www.osha.gov/FedReg\\_oshapdf/FED20140918.pdf](https://www.osha.gov/FedReg_oshapdf/FED20140918.pdf)

**CHANGE VII:** 81 FR 31854 (May 20, 2016) or refer to:  
[https://www.osha.gov/FedReg\\_oshapdf/FED20160512.pdf](https://www.osha.gov/FedReg_oshapdf/FED20160512.pdf)

**Occupational Injury and Illness Recording and Reporting Requirements,  
§§1904.0 through 1904.46; and**

As adopted by the

Safety and Health Codes Board

Date: October 11, 2001

**16 VAC 25-60-50, Accidents Reports; 16 VAC 25-60-60,  
Occupational Injury and Illness Records, and 16 VAC 25-60-70,  
Annual Survey**

As Repealed by the

Safety and Health Codes Board

Date: October 11, 2001



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Dates: January 1, 2002  
January 1, 2003

16 VAC 25-60-1904.0 through 1904.46, Occupational Injury and Illness Recording and Reporting Requirements,  
§§1904.0 through 1904.46, Revised Final Rule

Effective Date: December 31, 2001

Repeal of 16 VAC 25-60-50, 16 VAC 25-60-60 and 16 VAC 25-60-70

When the regulations, as set forth in the final rule for the 16 VAC 25-85-1904.0 through 1904.46, Occupational Injury and Illness Recording and Reporting Requirements, §§1904.0 through 1904.46, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

#### Federal Terms

29 CFR

Assistant Secretary

Agency

29 CFR 1904.0 through 1904.46

**January 1, 2002** (for 29 CFR 1904.0 through 1904.09, 1904.10(c) 1904.11 and 1904.13 through 1904.28, 1904.30 through 1904.46, 1904.29 except the second sentence in (b)(7)(vi))

**January 1, 2003** (for 29 CFR 1904.10 (a) and (b), 29 CFR 1904.12 and 1904.29 (b)(7)(vi)) second sentence

#### VOSH Equivalent

VOSH Standard

Commissioner of Labor and Industry

Department

16 VAC 85-1904.0 through 1904.46

**January 1, 2002** (for §§1904.0 through 1904.09, 1904.10(c), 1904.11 and 1904.13 through 1904.28, 1904.30 through 1904.46, 1904.29, except the second sentence in (b)(7)(vi))

**January 1, 2003** (for §§ 1904.10(a) and (b), 1904.12, and 1904.29 (b)(7)(vi)) second sentence

#### Implementation Schedule

The following sections will become **effective on January 1, 2002**

1904.0 through 1904.09  
1904.10(c)  
1904.11  
1904.13 through 1904.28  
1904.29 except (b)(7)(vi) second sentence  
1904.30 through 1904.46

The following sections will become **effective on January 1, 2003**

1904.10(a) and (b)  
1904.12  
1904.29(b)(7)(vi) second sentence

**Occupational Injury and Illness Recording and Reporting Requirements, §1904.10**

As adopted by the  
Safety and Health Codes Board

Date: December 2, 2002



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective dates: March 1, 2003

16VAC25-60-1904.10, Occupational Injury and Illness Recording and Reporting Requirements, §1904.10;  
Revised Final Rule

When the regulations, as set forth in the final rule for the Occupational Injury and Illness Recording and Reporting Requirements, §1904.10, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

29 CFR 1904.0 through 1904.46

16 VAC 25-60-1904.0 through 1904.46

January 1, 2003

March 1, 2003

**16 VAC 25-85-1904, Occupational Injury and Illness Recording and Reporting Requirements,  
Revised Final Rule, §§1904.10, 1904.12 and 1904.29**

As Adopted by the  
Safety and Health Codes Board

Date: June 13, 2003



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: January 1, 2004

16 VAC 25-85-1904, Occupational Injury and Illness Recording and Reporting Requirements,  
Revised Final Rule

When the regulations, as set forth in the revised final rule for the Occupational Injury and Illness Recording and Reporting Requirements, §§1904.10, 1904.12, and 1904.29 (b)(7)(vi), are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

January 1, 2004

January 1, 2004



**16 VAC 25-85-1904, Occupational Injury and Illness Recording and Reporting Requirements,  
Revised Final Rule, §§1904.12 and 1904.29**

As Adopted by the  
Safety and Health Codes Board

Date: November 5, 2003



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: January 15, 2004

16VAC25-85-1904, Occupational Injury and Illness Recording and Reporting Requirements,  
Revised Final Rule

When the regulations, as set forth in the revised final rule for the Occupational Injury and Illness Recording and Reporting Requirements, §§1904.12, and 1904.29 (b)(7)(vi), are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

January 1, 2004

January 15, 2004

**Occupational Injury and Illness Recording and Reporting Requirements –  
NAICS Update and Reporting Revisions, 16VAC25-85-1904.2 and 16VAC25-85-1904.39**

As Adopted by the  
Safety and Health Codes Board

Date: July 9, 2015



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: September 15, 2015

Occupational Injury and Illness Recording and Reporting Requirements –  
NAICS Update and Reporting Revisions, 16VAC25-85-1904.2 and 16VAC25-85-1904.39

When the regulations, as set forth in the amendment to Regulation for Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions, 16VAC25-85-1904.2 and 16VAC25-85-1904.39, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

OSHA

VOSH

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Area Office

Regional Office

Agency

Department

January 1, 2015

September 15, 2015

**Final Rule**

**Part 1904 of Title 29 of the Code of Federal Regulations is hereby amended as follows:**

**PART 1904—[AMENDED]**

■ 1. The authority citation for part 1904 continues to read as follows:  
**Authority:** 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 3–2000 (65 FR 50017), and 5 U.S.C. 533.

■ 2. Amend § 1904.2 by revising paragraphs (a)(1) and (b) to read as follows:

**§ 1904.2 Partial exemption for establishments in certain industries.**

(a) *Basic requirement.* (1) If your business establishment is classified in a specific industry group listed in appendix A to this subpart, you do not need to keep OSHA injury and illness records unless the government asks you to keep the records under §§ 1904.41 or 1904.42. However, all employers must report to OSHA any workplace incident that results in an employee's fatality, inpatient hospitalization, amputation, or loss of an eye (see § 1904.39).  
 \* \* \* \*

(b) *Implementation—(1) Is the partial industry classification exemption based on the industry classification of my entire company or on the classification of individual business establishments operated by my company?* The partial industry classification exemption applies to individual business establishments. If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be partially exempt.

(2) *How do I determine the correct NAICS code for my company or for*

*individual establishments?* You can determine your NAICS code by using one of three methods, or you may contact your nearest OSHA office or State agency for help in determining your NAICS code:

(i) You can use the search feature at the U.S. Census Bureau NAICS main Web page: <http://www.census.gov/eos/www/naics/>. In the search box for the most recent NAICS, enter a keyword that describes your kind of business. A list of primary business activities containing that keyword and the corresponding NAICS codes will appear. Choose the one that most closely corresponds to your primary business activity, or refine your search to obtain other choices.

(ii) Rather than searching through a list of primary business activities, you may also view the most recent complete NAICS structure with codes and titles by clicking on the link for the most recent NAICS on the U.S. Census Bureau NAICS main Web page: <http://www.census.gov/eos/www/naics/>. Then click on the two-digit Sector code to see all the NAICS codes under that Sector. Then choose the six-digit code of your interest to see the corresponding definition, as well as cross-references and index items, when available.

(iii) If you know your old SIC code, you can also find the appropriate 2002 NAICS code by using the detailed conversion (concordance) between the 1987 SIC and 2002 NAICS available in Excel format for download at the "Concordances" link at the U.S. Census Bureau NAICS main Web page: <http://www.census.gov/eos/www/naics/>.

■ 3. Revise Non-Mandatory Appendix A to Subpart B of Part 1904 to read as follows:

**Non-Mandatory Appendix A to Subpart B of Part 1904—Partially Exempt Industries**

Employers are not required to keep OSHA injury and illness records for any establishment classified in the following North American Industry Classification System (NAICS) codes, unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or the BLS. All employers, including those partially exempted by reason of company size or industry classification, must report to OSHA any employee's fatality, inpatient hospitalization, amputation, or loss of an eye (see § 1904.39).

NAICS Code	Industry
4412 .....	Other Motor Vehicle Dealers.
4431 .....	Electronics and Appliance Stores.
4461 .....	Health and Personal Care Stores.
4471 .....	Gasoline Stations.

NAICS Code	Industry
4481 .....	Clothing Stores.
4482 .....	Shoe Stores.
4483 .....	Jewelry, Luggage, and Leather Goods Stores.
4511 .....	Sporting Goods, Hobby, and Musical Instrument Stores.
4512 .....	Book, Periodical, and Music Stores.
4531 .....	Florists.
4532 .....	Office Supplies, Stationery, and Gift Stores.
4812 .....	Nonscheduled Air Transportation.
4861 .....	Pipeline Transportation of Crude Oil.
4862 .....	Pipeline Transportation Natural Gas.
4869 .....	Other Pipeline Transportation.
4879 .....	Scenic and Sightseeing Transportation, Other.
4885 .....	Freight Transportation Arrangement.
5111 .....	Newspaper, Periodical, Book, and Directory Publishers.
5112 .....	Software Publishers.
5121 .....	Motion Picture and Video Industries.
5122 .....	Sound Recording Industries.
5151 .....	Radio and Television Broadcasting.
5172 .....	Wireless Telecommunications Carriers (except Satellite).
5173 .....	Telecommunications Resellers.
5179 .....	Other Telecommunications.
5181 .....	Internet Service Providers and Web Search Portals.
5182 .....	Data Processing, Hosting, and Related Services.
5191 .....	Other Information Services.
5211 .....	Monetary Authorities—Central Bank.
5221 .....	Depository Credit Intermediation.
5222 .....	Nondepository Credit Intermediation.
5223 .....	Activities Related to Credit Intermediation.
5231 .....	Securities and Commodity Contracts Intermediation and Brokerage.
5232 .....	Securities and Commodity Exchanges.
5239 .....	Other Financial Investment Activities.
5241 .....	Insurance Carriers.
5242 .....	Agencies, Brokerages, and Other Insurance Related Activities.
5251 .....	Insurance and Employee Benefit Funds.
5259 .....	Other Investment Pools and Funds.
5312 .....	Offices of Real Estate Agents and Brokers.
5331 .....	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works).
5411 .....	Legal Services.
5412 .....	Accounting, Tax Preparation, Bookkeeping, and Payroll Services.
5413 .....	Architectural, Engineering, and Related Services.
5414 .....	Specialized Design Services.
5415 .....	Computer Systems Design and Related Services.

NAICS Code	Industry
5416 .....	Management, Scientific, and Technical Consulting Services.
5417 .....	Scientific Research and Development Services.
5418 .....	Advertising and Related Services.
5511 .....	Management of Companies and Enterprises.
5611 .....	Office Administrative Services.
5614 .....	Business Support Services.
5615 .....	Travel Arrangement and Reservation Services.
5616 .....	Investigation and Security Services.
6111 .....	Elementary and Secondary Schools.
6112 .....	Junior Colleges.
6113 .....	Colleges, Universities, and Professional Schools.
6114 .....	Business Schools and Computer and Management Training.
6115 .....	Technical and Trade Schools.
6116 .....	Other Schools and Instruction.
6117 .....	Educational Support Services.
6211 .....	Offices of Physicians.
6212 .....	Offices of Dentists.
6213 .....	Offices of Other Health Practitioners.
6214 .....	Outpatient Care Centers.
6215 .....	Medical and Diagnostic Laboratories.
6244 .....	Child Day Care Services.
7114 .....	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures.
7115 .....	Independent Artists, Writers, and Performers.
7213 .....	Rooming and Boarding Houses.
7221 .....	Full-Service Restaurants.
7222 .....	Limited-Service Eating Places.
7224 .....	Drinking Places (Alcoholic Beverages).
8112 .....	Electronic and Precision Equipment Repair and Maintenance.
8114 .....	Personal and Household Goods Repair and Maintenance.
8121 .....	Personal Care Services.
8122 .....	Death Care Services.
8131 .....	Religious Organizations.
8132 .....	Grantmaking and Giving Services.
8133 .....	Social Advocacy Organizations.
8134 .....	Civic and Social Organizations.
8139 .....	Business, Professional, Labor, Political, and Similar Organizations.

■ 4. Revise § 1904.39 to read as follows:

**§ 1904.39 Reporting fatalities, hospitalizations, amputations, and losses of an eye as a result of work-related incidents to OSHA.**

(a) *Basic requirement.* (1) Within eight (8) hours after the death of any employee as a result of a work-related incident, you must report the fatality to the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

(2) Within ~~twenty-four (24)~~ **eight (8)** hours after the in-patient hospitalization of one or more employees or an employee's

amputation or an employee's loss of an eye, as a result of a work-related incident, you must report the in-patient hospitalization, amputation, or loss of an eye to OSHA.

(3) You must report the fatality, inpatient hospitalization, amputation, or loss of an eye using one of the following methods:

(i) By telephone or in person to the OSHA Area Office that is nearest to the site of the incident.

(ii) By telephone to the OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742).

(iii) By electronic submission using the reporting application located on OSHA's public Web site at [www.osha.gov](http://www.osha.gov).

(b) *Implementation—(1) If the Area Office is closed, may I report the fatality, in-patient hospitalization, amputation, or loss of an eye by leaving a message on OSHA's answering machine, faxing the Area Office, or sending an email?* No, if the Area Office is closed, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye using either the 800 number or the reporting application located on OSHA's public Web site at [www.osha.gov](http://www.osha.gov).

(2) *What information do I need to give to OSHA about the in-patient hospitalization, amputation, or loss of an eye?* You must give OSHA the following information for each fatality, in-patient hospitalization, amputation, or loss of an eye:

- (i) The establishment name;
- (ii) The location of the work-related incident;
- (iii) The time of the work-related incident;
- (iv) The type of reportable event (i.e., fatality, in-patient hospitalization, amputation, or loss of an eye);
- (v) The number of employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;
- (vi) The names of the employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;
- (vii) Your contact person and his or her phone number; and
- (viii) A brief description of the work related incident.

(3) *Do I have to report the fatality, inpatient hospitalization, amputation, or loss of an eye if it resulted from a motor vehicle accident on a public street or highway?* If the motor vehicle accident occurred in a construction work zone, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye. If the motor vehicle accident occurred on a public street or highway,



but not in a construction work zone, you do not have to report the fatality, inpatient hospitalization, amputation, or loss of an eye to OSHA. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(4) *Do I have to report the fatality, inpatient hospitalization, amputation, or loss of an eye if it occurred on a commercial or public transportation system?* No, you do not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to OSHA if it occurred on a commercial or public transportation system (e.g., airplane, train, subway, or bus). However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(5) *Do I have to report a work-related fatality or in-patient hospitalization caused by a heart attack?* Yes, your local OSHA Area Office director will decide whether to investigate the event, depending on the circumstances of the heart attack.

(6) *What if the fatality, in-patient hospitalization, amputation, or loss of an eye does not occur during or right after the work-related incident?* You must only report a fatality to OSHA if the fatality occurs within thirty (30) days of the work-related incident. For

an in-patient hospitalization, amputation, or loss of an eye, you must only report the event to OSHA if it occurs within ~~twenty-four (24)~~ eight (8) hours of the work-related incident. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(7) *What if I don't learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye right away?* If you do not learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye at the time it takes place, you must make the report to OSHA within the following time period after the fatality, in-patient hospitalization, amputation, or loss of an eye is reported to you or to any of your agent(s): Eight (8) hours for a fatality, and ~~twenty-four (24)~~ eight (8) hours for an in-patient hospitalization, an amputation, or a loss of an eye.

(8) *What if I don't learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident?* If you do not learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident, you must make the report to OSHA within the following time period after you or any of your agent(s) learn that the reportable fatality, in-patient

hospitalization, amputation, or loss of an eye was the result of a work-related incident: Eight (8) hours for a fatality, and ~~twenty-four (24)~~ eight (8) hours for an inpatient hospitalization, an amputation, or a loss of an eye.

(9) *How does OSHA define "in-patient hospitalization"?* OSHA defines inpatient hospitalization as a formal admission to the in-patient service of a hospital or clinic for care or treatment.

(10) *Do I have to report an in-patient hospitalization that involves only observation or diagnostic testing?* No, you do not have to report an in-patient hospitalization that involves only observation or diagnostic testing. You must only report to OSHA each inpatient hospitalization that involves care or treatment.

(11) *How does OSHA define "amputation"?* An amputation is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached. Amputations do not include avulsions, enucleations, degloving, scalpings, severed ears, or broken or chipped teeth.

[FR Doc. 2014-21514 Filed 9-17-14; 8:45 am]  
BILLING CODE 4510-26-P

## 2015 SESSION

### CHAPTER 270

*An Act to amend and reenact § [40.1-51.1](#) of the Code of Virginia, relating to workplace safety; employer reporting requirements.*

[H 1681]

Approved March 17, 2015

Be it enacted by the General Assembly of Virginia:

1. That § [40.1-51.1](#) of the Code of Virginia is amended and reenacted as follows:

§ [40.1-51.1](#). Duties of employers.

A. It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, and to comply with all applicable occupational safety and health rules and regulations promulgated under this title.

B. Every employer shall provide to employees by such suitable means as shall be prescribed in rules and regulations of the Safety and Health Codes Board, information regarding their exposure to toxic materials or harmful physical agents and prompt information when they are exposed to concentration or levels of toxic materials or harmful physical agents in excess of those prescribed by the applicable safety and health standards and shall provide employees or their representatives with the opportunity to observe monitoring or measuring of exposures. Every employer shall also inform any employee who is being exposed of the corrective action being taken and shall provide former employees with access to information about their exposure to toxic materials or harmful physical agents.

C. Every employer cited for a violation of any safety and health provisions of this title or standards, rules and regulations promulgated thereunder shall post a copy of such citation at the site of the violations so noted as prescribed in the rules and regulations of the Safety and Health Codes Board.

D. Every employer shall report to the Virginia Department of Labor and Industry within eight hours any work-related incident resulting in (i) a fatality ~~or in~~, (ii) the ~~in-patient~~ *inpatient* hospitalization of ~~three~~ *one* or more persons, (iii) *an* ~~amputation~~, or (iv) *the loss of an eye*, as prescribed in the rules and regulations of the Safety and Health Codes Board.

E. Every employer, through posting of notices or other appropriate means, shall keep his employees informed of their rights and responsibilities under this title and of specific safety and health standards applicable to his business establishment.

F. An employer representative shall be given the opportunity to accompany the safety and health inspectors on safety or health inspections.



G. Nothing in this section shall be construed to limit the authority of the Commissioner pursuant to § [40.1-6](#) or the Board pursuant to § [40.1-22](#) to promulgate necessary rules and regulations to protect and promote the safety and health of employees.

**Recording and Reporting Occupational Injuries and Illnesses -  
Reporting Fatalities, Hospitalizations, Amputations, and Losses of an Eye  
As a Result of Work-related Incidents to OSHA, 16VAC25-85-1904.39**

As Adopted by the

Safety and Health Codes Board

Date: September 13, 2016



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: December 1, 2016

**Recording and Reporting Occupational Injuries and Illnesses -  
Reporting Fatalities, Hospitalizations, Amputations, and Losses of an Eye  
As a Result of Work-related Incidents to OSHA, 16VAC25-85-1904.39**

When the regulations, as set forth in the amendment to Regulation for Reporting Fatalities, Hospitalizations, Amputations, and Losses of an Eye As a Result of Work-related Incidents to OSHA, 16VAC25-85-1904.39, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

OSHA

VOSH

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Area Office

Regional Office

Agency

Department

January 1, 2015

December 1, 2016

## 2015 SESSION

### CHAPTER 270

*An Act to amend and reenact § [40.1-51.1](#) of the Code of Virginia, relating to workplace safety; employer reporting requirements.*

[H 1681]

Approved March 17, 2015

Be it enacted by the General Assembly of Virginia:

1. That § [40.1-51.1](#) of the Code of Virginia is amended and reenacted as follows:

§ [40.1-51.1](#). Duties of employers.

A. It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, and to comply with all applicable occupational safety and health rules and regulations promulgated under this title.

B. Every employer shall provide to employees by such suitable means as shall be prescribed in rules and regulations of the Safety and Health Codes Board, information regarding their exposure to toxic materials or harmful physical agents and prompt information when they are exposed to concentration or levels of toxic materials or harmful physical agents in excess of those prescribed by the applicable safety and health standards and shall provide employees or their representatives with the opportunity to observe monitoring or measuring of exposures. Every employer shall also inform any employee who is being exposed of the corrective action being taken and shall provide former employees with access to information about their exposure to toxic materials or harmful physical agents.

C. Every employer cited for a violation of any safety and health provisions of this title or standards, rules and regulations promulgated thereunder shall post a copy of such citation at the site of the violations so noted as prescribed in the rules and regulations of the Safety and Health Codes Board.

D. Every employer shall report to the Virginia Department of Labor and Industry within eight hours any work-related incident resulting in (i) a fatality ~~or in~~, (ii) the ~~in-patient~~ *inpatient* hospitalization of ~~three~~ *one* or more persons, (iii) *an* ~~amputation~~, or (iv) *the loss of an eye*, as prescribed in the rules and regulations of the Safety and Health Codes Board.

E. Every employer, through posting of notices or other appropriate means, shall keep his employees informed of their rights and responsibilities under this title and of specific safety and health standards applicable to his business establishment.

F. An employer representative shall be given the opportunity to accompany the safety and health inspectors on safety or health inspections.

G. Nothing in this section shall be construed to limit the authority of the Commissioner pursuant to § [40.1-6](#) or the Board pursuant to § [40.1-22](#) to promulgate necessary rules and regulations to protect and promote the safety and health of employees.

## VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

### CHAPTER 336

*An Act to amend and reenact § 40.1-51.1 of the Code of Virginia, relating to reporting requirements for work-related hospitalization, amputation, or loss of an eye.*

[H 691]

Approved March 11, 2016

**Be it enacted by the General Assembly of Virginia:**

**1. That § 40.1-51.1 of the Code of Virginia is amended and reenacted as follows:**

**§ 40.1-51.1. Duties of employers.**

A. It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment ~~which~~ *that* is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees; and to comply with all applicable occupational safety and health rules and regulations promulgated under this title.

B. Every employer shall provide to employees, by such suitable means as shall be prescribed in rules and regulations of the Safety and Health Codes Board, information regarding their exposure to toxic materials or harmful physical agents and prompt information when they are exposed to concentration or levels of toxic materials or harmful physical agents in excess of those prescribed by the applicable safety and health standards and shall provide employees or their representatives with the opportunity to observe monitoring or measuring of exposures. Every employer shall also inform any employee who is being exposed of the corrective action being taken and shall provide former employees with access to information about their exposure to toxic materials or harmful physical agents.

C. Every employer cited for a violation of any safety and health provisions of this title or standards, rules, and regulations promulgated thereunder shall post a copy of such citation at the site of the violations so noted as prescribed in the rules and regulations of the Safety and Health Codes Board.

D. Every employer shall report to the Virginia Department of Labor and Industry within eight hours any work-related incident resulting in ~~(i)~~ a fatality; ~~(ii)~~ *or within 24 hours any work-related incident resulting in (i)* the inpatient hospitalization of one or more persons, ~~(iii)~~ *(ii)* an amputation, or ~~(iv)~~ *(iii)* the loss of an eye, as prescribed in the rules and regulations of the Safety and Health Codes Board.

E. Every employer, through posting of notices or other appropriate means, shall keep his employees informed of their rights and responsibilities under this title and of specific safety and health standards applicable to his business establishment.

F. An employer representative shall be given the opportunity to accompany the safety and health inspectors on safety or health inspections.

G. Nothing in this section shall be construed to limit the authority of the Commissioner pursuant to § 40.1-6 or the Board pursuant to § 40.1-22 to promulgate necessary rules and regulations to protect and promote the safety and health of employees.

**Non-relevant Federal Register  
material has been deleted**

■ 4. Revise § 1904.39 to read as follows:

**§ 1904.39 Reporting fatalities, hospitalizations, amputations, and losses of an eye as a result of work-related incidents to OSHA.**

(a) *Basic requirement.* (1) Within eight (8) hours after the death of any employee as a result of a work-related incident, you must report the fatality to the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

(2) Within twenty-four (24) hours after the in-patient hospitalization of one or more employees or an employee's

amputation or an employee's loss of an eye, as a result of a work-related incident, you must report the in-patient hospitalization, amputation, or loss of an eye to OSHA.

(3) You must report the fatality, in-patient hospitalization, amputation, or loss of an eye using one of the following methods:

(i) By telephone or in person to the OSHA Area Office that is nearest to the site of the incident.

(ii) By telephone to the OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742).

(iii) By electronic submission using the reporting application located on OSHA's public Web site at [www.osha.gov](http://www.osha.gov).

(b) *Implementation—(1) If the Area Office is closed, may I report the fatality, in-patient hospitalization, amputation, or loss of an eye by leaving a message on OSHA's answering machine, faxing the Area Office, or sending an email?* No, if the Area Office is closed, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye using either the 800 number or the reporting application located on OSHA's public Web site at [www.osha.gov](http://www.osha.gov).

(2) *What information do I need to give to OSHA about the in-patient hospitalization, amputation, or loss of an eye?* You must give OSHA the following information for each fatality, in-patient hospitalization, amputation, or loss of an eye:

(i) The establishment name;

(ii) The location of the work-related incident;

(iii) The time of the work-related incident;

(iv) The type of reportable event (i.e., fatality, in-patient hospitalization, amputation, or loss of an eye);

(v) The number of employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;

(vi) The names of the employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;

(vii) Your contact person and his or her phone number; and

(viii) A brief description of the work-related incident.

(3) *Do I have to report the fatality, in-patient hospitalization, amputation, or loss of an eye if it resulted from a motor vehicle accident on a public street or highway?* If the motor vehicle accident occurred in a construction work zone, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye. If the motor vehicle accident occurred on a public street or highway,



but not in a construction work zone, you do not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to OSHA. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(4) *Do I have to report the fatality, in-patient hospitalization, amputation, or loss of an eye if it occurred on a commercial or public transportation system?* No, you do not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to OSHA if it occurred on a commercial or public transportation system (e.g., airplane, train, subway, or bus). However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(5) *Do I have to report a work-related fatality or in-patient hospitalization caused by a heart attack?* Yes, your local OSHA Area Office director will decide whether to investigate the event, depending on the circumstances of the heart attack.

(6) *What if the fatality, in-patient hospitalization, amputation, or loss of an eye does not occur during or right after the work-related incident?* You must only report a fatality to OSHA if the fatality occurs within thirty (30) days of the work-related incident. For

an in-patient hospitalization, amputation, or loss of an eye, you must only report the event to OSHA if it occurs within twenty-four (24) hours of the work-related incident. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(7) *What if I don't learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye right away?* If you do not learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye at the time it takes place, you must make the report to OSHA within the following time period after the fatality, in-patient hospitalization, amputation, or loss of an eye is reported to you or to any of your agent(s): Eight (8) hours for a fatality, and twenty-four (24) hours for an in-patient hospitalization, an amputation, or a loss of an eye.

(8) *What if I don't learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident?* If you do not learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident, you must make the report to OSHA within the following time period after you or any of your agent(s) learn that the reportable fatality, in-patient

hospitalization, amputation, or loss of an eye was the result of a work-related incident: Eight (8) hours for a fatality, and twenty-four (24) hours for an in-patient hospitalization, an amputation, or a loss of an eye.

(9) *How does OSHA define "in-patient hospitalization"?* OSHA defines in-patient hospitalization as a formal admission to the in-patient service of a hospital or clinic for care or treatment.

(10) *Do I have to report an in-patient hospitalization that involves only observation or diagnostic testing?* No, you do not have to report an in-patient hospitalization that involves only observation or diagnostic testing. You must only report to OSHA each in-patient hospitalization that involves care or treatment.

(11) *How does OSHA define "amputation"?* An amputation is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached. Amputations do not include avulsions, enucleations, degloving, scalpings, severed ears, or broken or chipped teeth.

[FR Doc. 2014-21514 Filed 9-17-14; 8:45 am]

BILLING CODE 4510-26-P

**Improve Tracking of Workplace Injuries and Illnesses, §§1904.35, 1904.36, and 1904.41;  
Final Rule; and  
Correction to §1904.35(b)(2)**

As Adopted by the  
Safety and Health Codes Board

Date: September 13, 2016



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: December 1, 2016

16VAC85-1904.35, Employee Involvement, §1904.35  
16VAC85-1904.36, Prohibition Against Discrimination, §1904.36  
16VAC85-1904.41, Electronic Submission of Injury and Illness Records to OSHA, §1904.41



When the regulations, as set forth in the Final Rule to Improve Tracking of Workplace Injuries and Illnesses, §§1904.35, 1904.36, and 1904.41; and the Correction to §1904.35(b)(2), are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

**Federal Terms**

29CFR

Assistant Secretary

Agency

**VOSH Equivalent**

VOSH Standard

Commissioner of Labor and Industry

Department

**Federal Effective Dates**

January 1, 2017, except for below:

August 10, 2016 for §1904.36

**VOSH Effective Dates**

January 1, 2017, except for below:

December 1, 2016 for §1904.35 & §1904.36

**Final Rule**

For the reasons stated in the preamble, OSHA amends parts 1904 and 1902 of chapter XVII of title 29 as follows:

**PART 1904—[AMENDED]****■ 2. Revise § 1904.35 to read as follows:****§ 1904.35 Employee involvement.**

(a) *Basic requirement.* Your employees and their representatives must be involved in the recordkeeping system in several ways.

(1) You must inform each employee of how he or she is to report a work-related injury or illness to you.

(2) You must provide employees with the information described in paragraph (b)(1)(iii) of this section.

(3) You must provide access to your injury and illness records for your employees and their representatives as described in paragraph (b)(2) of this section.

(b) *Implementation—*(1) *What must I do to make sure that employees report work-related injuries and illnesses to me?* (i) You must establish a reasonable procedure for employees to report work-related injuries and illnesses promptly and accurately. A procedure is not reasonable if it would deter or discourage a reasonable employee from accurately reporting a workplace injury or illness;

(ii) You must inform each employee of your procedure for reporting work-related injuries and illnesses;

(iii) You must inform each employee that:

(A) Employees have the right to report work-related injuries and illnesses; and

(B) Employers are prohibited from discharging or in any manner discriminating against employees for reporting work-related injuries or illnesses; and

(iv) You must not discharge or in any manner discriminate against any employee for reporting a work-related injury or illness.

(2) [Reserved]

■ 3. Revise § 1904.36 to read as follows:

**§ 1904.36 Prohibition against discrimination.**

In addition to § 1904.35, section 11(c) of the OSH Act also prohibits you from discriminating against an employee for reporting a work-related fatality, injury, or illness. That provision of the Act also protects the employee who files a safety and health complaint, asks for access to the part 1904 records, or otherwise exercises any rights afforded by the OSH Act.

**Subpart E—Reporting Fatality, Injury and Illness Information to the Government**

■ 5. Revise § 1904.41 to read as follows:

**§ 1904.41 Electronic submission of injury and illness records to OSHA.**

(a) *Basic requirements*—(1) *Annual electronic submission of part 1904 records by establishments with 250 or more employees.* If your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must electronically submit information from the three recordkeeping forms that you keep under this part (OSHA Form 300A Summary of Work-Related Injuries and Illnesses, OSHA Form 300 Log of Work-Related Injuries and Illnesses, and OSHA Form 301 Injury and Illness Incident Report) to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the forms.

(2) *Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees but fewer than 250 employees in designated industries.* If your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your

establishment is classified in an industry listed in appendix A to subpart E of this part, then you must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the form.

(3) *Electronic submission of part 1904 records upon notification.* Upon notification, you must electronically submit the requested information from your part 1904 records to OSHA or OSHA's designee.

(b) *Implementation*—(1) *Does every employer have to routinely submit information from the injury and illness records to OSHA?* No, only two categories of employers must routinely submit information from their injury and illness records. First, if your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must submit the required Form 300A, 300, and 301 information to OSHA once a year. Second, if your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to subpart E of this part, then you must submit the required Form 300A information to OSHA once a year. Employers in these two categories must submit the required information by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form or forms (for example, 2017 for the 2016 forms). If you are not in either of these two categories, then you must submit information from the injury and illness records to OSHA only if OSHA notifies you to do so for an individual data collection.

(2) *If I have to submit information under paragraph (a)(1) of this section, do I have to submit all of the information from the recordkeeping form?* No, you are required to submit all of the information from the form *except* the following:

(i) Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B).

(ii) Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

(3) *Do part-time, seasonal, or temporary workers count as employees in the criteria for number of employees in paragraph (a) of this section?* Yes, each individual employed in the establishment at any time during the calendar year counts as one employee, including full-time, part-time, seasonal, and temporary workers.

(4) *How will OSHA notify me that I must submit information from the injury and illness records as part of an individual data collection under paragraph (a)(3) of this section?* OSHA will notify you by mail if you will have to submit information as part of an individual data collection under paragraph (a)(3). OSHA will also announce individual data collections through publication in the **Federal Register** and the OSHA newsletter, and announcements on the OSHA Web site. If you are an employer who must routinely submit the information, then OSHA will not notify you about your routine submittal.

(5) *How often do I have to submit the information from the injury and illness records?* If you are required to submit information under paragraph (a)(1) or (2) of this section, then you must submit the information once a year, by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form or forms. If you are submitting information because OSHA notified you to submit information as part of an individual data collection under paragraph (a)(3) of this section, then you must submit the information as often as specified in the notification.

(6) *How do I submit the information?* You must submit the information electronically. OSHA will provide a secure Web site for the electronic submission of information. For individual data collections under paragraph (a)(3) of this section, OSHA will include the Web site's location in the notification for the data collection.

(7) *Do I have to submit information if my establishment is partially exempt from keeping OSHA injury and illness records?* If you are partially exempt from keeping injury and illness records under §§ 1904.1 and/or 1904.2, then you do not have to routinely submit part 1904 information under paragraphs (a)(1) and (2) of this section. You will have to submit information under paragraph (a)(3) of this section if OSHA informs you in writing that it will collect injury and illness information from you. If you receive such a notification, then you must keep the injury and illness records required by this part and submit information as directed.



(8) *Do I have to submit information if I am located in a State Plan State?* Yes, the requirements apply to employers located in State Plan States.

(9) *May an enterprise or corporate office electronically submit part 1904 records for its establishment(s)?* Yes, if your enterprise or corporate office had

ownership of or control over one or more establishments required to submit information under paragraph (a)(1) or (2) of this section, then the enterprise or corporate office may collect and electronically submit the information for the establishment(s).

(c) *Reporting dates.* (1) In 2017 and 2018, establishments required to submit under paragraph (a)(1) or (2) of this section must submit the required information according to the table in this paragraph (c)(1):

Submission year	Establishments submitting under paragraph (a)(1) of this section must submit the required information from this form/these forms:	Establishments submitting under paragraph (a)(2) of this section must submit the required information from this form:	Submission deadline
2017 .....	300A .....	300A .....	July 1, 2017.
2018 .....	300A, 300, 301 .....	300A .....	July 1, 2018.

(2) Beginning in 2019, establishments that are required to submit under paragraph (a)(1) or (2) of this section will have to submit all of the required information by March 2 of the year after the calendar year covered by the form or forms (for example, by March 2, 2019, for the forms covering 2018).

■ 6. Add appendix A to subpart E of part 1904 to read as follows:

**Appendix A to Subpart E of Part 1904—  
Designated Industries for  
§ 1904.41(a)(2) Annual Electronic  
Submission of OSHA Form 300A  
Summary of Work-Related Injuries and  
Illnesses by Establishments With 20 or  
More Employees but Fewer Than 250  
Employees in Designated Industries**

NAICS	Industry
11 .....	Agriculture, forestry, fishing and hunting.
22 .....	Utilities.
23 .....	Construction.
31–33 .....	Manufacturing.
42 .....	Wholesale trade.
4413 .....	Automotive parts, accessories, and tire stores.
4421 .....	Furniture stores.
4422 .....	Home furnishings stores.
4441 .....	Building material and supplies dealers.
4442 .....	Lawn and garden equipment and supplies stores.
4451 .....	Grocery stores.
4452 .....	Specialty food stores.
4521 .....	Department stores.
4529 .....	Other general merchandise stores.
4533 .....	Used merchandise stores.
4542 .....	Vending machine operators.
4543 .....	Direct selling establishments.
4811 .....	Scheduled air transportation.
4841 .....	General freight trucking.
4842 .....	Specialized freight trucking.
4851 .....	Urban transit systems.
4852 .....	Interurban and rural bus transportation.
4853 .....	Taxi and limousine service.
4854 .....	School and employee bus transportation.
4855 .....	Charter bus industry.
4859 .....	Other transit and ground passenger transportation.
4871 .....	Scenic and sightseeing transportation, land.
4881 .....	Support activities for air transportation.
4882 .....	Support activities for rail transportation.
4883 .....	Support activities for water transportation.
4884 .....	Support activities for road transportation.
4889 .....	Other support activities for transportation.
4911 .....	Postal service.
4921 .....	Couriers and express delivery services.
4922 .....	Local messengers and local delivery.
4931 .....	Warehousing and storage.
5152 .....	Cable and other subscription programming.
5311 .....	Lessors of real estate.
5321 .....	Automotive equipment rental and leasing.
5322 .....	Consumer goods rental.
5323 .....	General rental centers.
5617 .....	Services to buildings and dwellings.
5621 .....	Waste collection.
5622 .....	Waste treatment and disposal.
5629 .....	Remediation and other waste management services.
6219 .....	Other ambulatory health care services.

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****29 CFR Parts 1904 and 1902**

[Docket No. OSHA–2013–0023]

RIN 1218–AC49

**Improve Tracking of Workplace Injuries and Illnesses; Correction****AGENCY:** Occupational Safety and Health Administration (OSHA), DOL.**ACTION:** Final rule; correction.

**SUMMARY:** OSHA published in the *Federal Register* of May 12, 2016, a final rule revising its Recording and Reporting Occupational Injuries and Illnesses Regulation. In the rule, a paragraph was inadvertently removed. This document reinserts that paragraph.

**DATES:** *Effective:* August 10, 2016.

**FOR FURTHER INFORMATION CONTACT:** For press inquiries: Frank Meilinger, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

For general and technical information: Miriam Schoenbaum, Office of Statistical Analysis, Room N–3507, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1841; email: [schoenbaum.miriam@dol.gov](mailto:schoenbaum.miriam@dol.gov).

**SUPPLEMENTARY INFORMATION:** OSHA published in the *Federal Register* of May 12, 2016, a final rule revising its Recording and Reporting Occupational Injuries and Illnesses regulation (92 FR 29624).

This document was prepared under the direction of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Sections 8 and 24 of the Occupational Safety and Health Act (29 U.S.C. 657, 673), Section 553 of the Administrative Procedure Act (5 U.S.C. 553), and Secretary of Labor's Order No. 41–2012 (77 FR 3912 (Jan. 25, 2012)).

**Need for Correction**

Inadvertently § 1904.35(b)(2) was designated as reserved. This document reinserts that paragraph.

In FR Rule Doc. No. 2016–10443 beginning on page 29624 in the issue of May 12, 2016, make the following correction:

On page 29692, in the first column, after the second paragraph, remove “(2) [Reserved].” and add the following in its place:

“(2) *Do I have to give my employees and their representatives access to the*

*OSHA injury and illness records?* Yes, your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the OSHA injury and illness records, with some limitations, as discussed below.

(i) *Who is an authorized employee representative?* An authorized employee representative is an authorized collective bargaining agent of employees.

(ii) *Who is a “personal representative” of an employee or former employee?* A personal representative is:

(A) Any person that the employee or former employee designates as such, in writing; or

(B) The legal representative of a deceased or legally incapacitated employee or former employee.

(iii) *If an employee or representative asks for access to the OSHA 300 Log, when do I have to provide it?* When an employee, former employee, personal representative, or authorized employee representative asks for copies of your current or stored OSHA 300 Log(s) for an establishment the employee or former employee has worked in, you must give the requester a copy of the relevant OSHA 300 Log(s) by the end of the next business day.

(iv) *May I remove the names of the employees or any other information from the OSHA 300 Log before I give copies to an employee, former employee, or employee representative?* No, you must leave the names on the 300 Log. However, to protect the privacy of injured and ill employees, you may not record the employee's name on the OSHA 300 Log for certain “privacy concern cases,” as specified in § 1904.29(b)(6) through (9).

(v) *If an employee or representative asks for access to the OSHA 301 Incident Report, when do I have to provide it?* (A) When an employee, former employee, or personal representative asks for a copy of the OSHA 301 Incident Report describing an injury or illness to that employee or former employee, you must give the requester a copy of the OSHA 301 Incident Report containing that information by the end of the next business day.

(B) When an authorized employee representative asks for copies of the OSHA 301 Incident Reports for an establishment where the agent represents employees under a collective bargaining agreement, you must give copies of those forms to the authorized employee representative within 7 calendar days. You are only required to give the authorized employee

representative information from the OSHA 301 Incident Report section titled "Tell us about the case." You must remove all other information from the copy of the OSHA 301 Incident Report or the equivalent substitute form that you give to the authorized employee representative.

(vi) *May I charge for the copies?* No, you may not charge for these copies the first time they are provided. However, if one of the designated persons asks for additional copies, you may assess a reasonable charge for retrieving and copying the records."

Signed at Washington, DC, on May 13, 2016.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2016-11817 Filed 5-19-16; 8:45 am]

BILLING CODE 4510-26-P

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